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6 IN THE MATTER OF: :
7 BCI Food Services, LLC :
8 t/a Garden District :Case #16-CMP-00022
9 1801 14th Street Northwest :
10 License #83769 :
11 Retailer Class CR :
12 ANC 1B :
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Whereupon, the above-referenced matter came on for hearing at the Alcoholic Beverage Control Board, Reeves Center, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

1 BOARD MEMBERS PRESENT

2 NICK ALBERTI, BOARD MEMBER

3 JAMES SHORT, BOARD MEMBER

4 MIKE SILVERSTEIN, BOARD MEMBER

5

6 ALSO PRESENT:

7 JASMIN ROSNER

8 JOAN STERLING

9 DAN MCKAY

10 THADDEUS CURTZ

11

1 P R O C E E D I N G S

2 PROTEST HEARING STATUS

3 CHAIRPERSON ANDERSON: The next case on
4 our calendar is a Motion Hearing, Case #16-PRO-
5 00022, Garden District, License #83769. Will the
6 parties please approach and identify themselves
7 for the record? Again, there's a sign-in sheet
8 that I need you to sign your name.

9 MS. ROSNER: Good morning, members of the
10 Board ,my name is Jasmin Rosner, counsel to
11 Garden District.

12 MR. CURTZ: My name is Thaddeus Curtz, I'm
13 the owner of Garden District.

14 CHAIRPERSON ANDERSON: And who's with you,
15 Ms. Rosner?

16 MS. ROSNER: I have my three-month-old
17 daughter with me.

18 CHAIRPERSON ANDERSON: So, you're not alone,
19 so I just wanted the record to reflect that.

20 MS. ROSNER: She doesn't have any ID to
21 verify that.

22 MR. ALBERTI: And she can't sign in

1 CHAIRPERSON ANDERSON: Thank you, yes.

2 MS. STERLING: Did they make her go through
3 the metal detector there, too?

4 MR. MCKAY: Good morning, Dan McKay, vice
5 president of Shaw-Dupont Citizens' Alliance.

6 MS. STERLING: Joan Sterling, president of
7 Shaw-Dupont Citizens' Alliance.

8 CHAIRPERSON ANDERSON: Good morning. Why are
9 we here today?

10 MS. STERLING: Why are we here? We're here
11 because we were dismissed as a protestant in the
12 case. We filed -- we believe we filed timely
13 notice and followed up with an in-person visit to
14 do so as required in the regulations.

15 CHAIRPERSON ANDERSON: Can you just provide
16 us what is it that -- well this is your -- you're
17 making a formal motion so why don't you just tell
18 us what it is that provides the facts of the
19 case, what is it that you're requesting, and why
20 you believe that your notice was timely filed.

21 MS. STERLING: Thank you. Yes, we're
22 requesting reinstatement as a protestant in this

1 case. In the four years that we've been in
2 existence we've never missed any of our
3 deadlines. In this case we mailed the letter to
4 the Garden District to the address as was on the
5 ABRA placard. That was the only contact
6 information that we had. It was in the ABRA
7 files which were sent to us when it was
8 placarded.

9 And when we did not hear from the applicant
10 as we normally do in these cases a few days
11 before our meeting, where he was invited to come
12 and discuss the renewal, we sent someone over, we
13 sent Mr. McKay over with another copy of the
14 letter to the applicant's location to make sure
15 that they were aware that the meeting was
16 happening and if they would like to attend to
17 discuss any of the residents' concerns and
18 discuss our potential possible protest, that we
19 would welcome their attendance.

20 CHAIRPERSON ANDERSON: Any other?

21 MS. STERLING: And they did not appear at our
22 monthly meeting and at that time we voted to

1 protest the license and then we appeared at the
2 roll call hearing.

3 MR. MCKAY: Yeah, and a point of information,
4 the gentleman that I presented the letter to
5 purported himself to be the owner/ --

6 MR. SILVERSTEIN: Please speak up a little.

7 MR. MCKAY: Sorry. The gentleman that I
8 talked with at the establishment who purported
9 himself to be the owner and manager is not the
10 gentleman here and so I see -- there's a
11 photograph of --

12 CHAIRPERSON ANDERSON: I can't hear you, sir.

13 MR. MCKAY: Sorry, there's a photograph here
14 of the gentleman that I spoke with, so maybe you
15 know -- maybe one of your employees -- who said
16 he was the owner and manager, and that's the one
17 I talked with and I gave the information to, so
18 that might be just a misunderstanding or
19 miscommunication here that -- and frankly when I
20 spoke with the employee I said we don't have a
21 major issue with the license renewal, it's a good
22 place for the neighborhood, a lot of neighborhood

1 [inaudible 17:09] so there are a few items that
2 we would like to discuss and I made that clear to
3 the gentleman that's in the picture there.

4 CHAIRPERSON ANDERSON: Who's speaking, the
5 attorney or the owner? Who's --

6 MS. ROSNER: I'll start. Members of the
7 Board, the applicants, or excuse me, the
8 protestants Shaw-DuPont Citizens Alliance is a
9 citizens' association and any citizen association
10 that protests a business for a liquor license
11 renewal is required to give seven days' notice.

12 We never received a letter from Shaw-
13 DuPont. We can't verify that they actually sent
14 a letter of notice, we had no opportunity to go
15 to their meeting to present in front of their
16 voting body, our business, our plans. Without
17 that important notice that robs us of the
18 opportunity to speak to the community and so
19 based on that, and based on the fact that they
20 have no proof that they ever sent a letter of
21 notice, it seems to us that the dismissal should
22 stand.

1 CHAIRPERSON ANDERSON: Any other
2 representations?

3 MR. CURTZ: Just two things. The first one
4 is that in the letter that they claim that they
5 sent to us, in the address block that's on that
6 letter, there's no zip code for our business.
7 It's possible that they didn't address the letter
8 properly and that's why we never got the letter.
9 It certainly wasn't sent certified mail and as
10 far as the claim that they came in to the
11 business and talked to somebody, that wasn't
12 seven days in advance of the meeting and for me
13 to be able to appear at the meeting I work, I
14 have two restaurants that I own and I work
15 regularly in the evenings and for me to be able
16 to appear at the meeting seven days' notice was
17 important to be able to do that and so without
18 that actual seven days' notice having been
19 received by me I could not plan around being able
20 to appear at the meeting.

21 CHAIRPERSON ANDERSON: You just answered my
22 question. I was going to ask you how were you

1 prejudiced since you were given the timely
2 notice?

3 MR. CURTZ: I'm scheduled to work in the
4 kitchen from 3:00 in the afternoon until 11:00 or
5 12:00 at night I need to find somebody on my
6 staff who can cover that shift for me and if I'm
7 not able to cover that shift I can't appear at
8 the meeting. If I can't have adequate notice to
9 be able to schedule somebody else to work for me,
10 I'm one of only two people in the kitchen, I
11 can't have one person working the kitchen and a
12 full restaurant outside, and so without notice I
13 can't plan around that.

14 CHAIRPERSON ANDERSON: Yes, ma'am.

15 MS. STERLING: Again our letter of notice was
16 sent to the address as on the ABRA placard which
17 also does not have a zip code. We had no other
18 further contact information for this applicant.
19 In many cases we've worked with a number of
20 neighborhood establishments and we know the e-
21 mail addresses of the owners or of their
22 attorneys and we automatically send there, but in

1 this case there was nothing on record here and in
2 fact after this we also called ABRA so that we
3 could e-mail some other things to them,
4 especially our motion for reconsideration, and
5 they were not able to easily access that for us
6 either. I don't know why that was the case. So,
7 we sent, as prescribed here that there's no
8 requirement that we know of to send registered
9 mail. We have not received the letter back in
10 our post office box as being rejected.

11 CHAIRPERSON ANDERSON: A quick question.
12 Everyone is saying if a letter is not sent with a
13 zip code, you live in the neighborhood so even if
14 the zip code is not listed on the placard, I mean
15 this is your neighborhood, you know the
16 neighborhood, so that's no excuse why a zip code
17 would not be on the letter, because you are the
18 citizens' association in the neighborhood so you
19 should know the zip code even if ABRA doesn't
20 know that. Maybe, but we have multiple zip codes
21 in the neighborhood. This is located on the
22 exact border of three different ANCs, it's on the

1 two side, we're one side. I'm not sure that it's
2 our responsibility to research the zip code. You
3 know, ABRA should provide the full contact
4 information if, in fact, we need to be mailing
5 letters. We think we went over and above by
6 physically going to the location a few days
7 before our meeting to remind them that they had
8 been invited to come to the meeting.

9 MR. CURTZ: A few days is not adequate
10 notice. The code requires seven days.

11 CHAIRPERSON ANDERSON: Any other questions?
12 Yes, Mr. Alberti.

13 MR. ALBERTI: Just a couple of quick
14 questions. So, I just want to make sure that I
15 understand this, so in your letter, Ms. Sterling,
16 you say that the letter was sent on April 13th,
17 is that correct?

18 MS. STERLING: Yes.

19 MR. ALBERTI: And that was eight days prior
20 to the meeting?

21 MS. STERLING: Yes.

22 MR. ALBERTI: And was it your expectation

1 that that would be delivered that day or the next
2 day?

3 MS. STERLING: Sure, it's D.C.

4 MR. ALBERTI: Okay, no further questions.

5 CHAIRPERSON ANDERSON: Any other questions?

6 MS. STERLING: As I stated, we've never had
7 an issue before and we have many protests over
8 the years that we've participated in.

9 CHAIRPERSON ANDERSON: I guess the bottom
10 line is that if -- if it's anticipated or
11 expected that you mail a letter it's going to
12 take maybe three days, so even if -- even if you
13 had mailed the letter on day eight, they probably
14 wouldn't get it because I think the statute says
15 that you would probably add another three days
16 because it would be expected that a letter would
17 be delivered within three days, not one day, so.
18 Any other Board members?

19 MR. MCKAY: Just one comment.

20 CHAIRPERSON ANDERSON: Yes, sir.

21 MR. MCKAY: That the gentleman I spoke with
22 said he was the owner of the establishment and so

1 he represented himself as the owner. Can the
2 current owner explain that?

3 CHAIRPERSON ANDERSON: And when was that?
4 What day was that?

5 MR. MCKAY: That was, as the president, Joan,
6 said that was probably three -- 18th -- three
7 days or so before the meeting.

8 CHAIRPERSON ANDERSON: But that's still, it's
9 my understanding that still doesn't comply with
10 the statute so even if you went, and even if --
11 and I'm just asking --

12 MR. MCKAY: Right -- right -- but you know,
13 you're --

14 MS. STERLING: You're correct, it doesn't --
15 you're correct it doesn't comply with the statute
16 but the statute doesn't require us to go in
17 person in addition. We do that --

18 MR. MCKAY: As a courtesy, right.

19 MS. STERLING: As a courtesy to make sure
20 that they're aware since we haven't heard from
21 them.

22 MR. ROBINSON: And our position on that would

1 just be that a claimed second late notice doesn't
2 cure a claimed first notice that was actually
3 never sent.

4 CHAIRPERSON ANDERSON: Any other
5 representation?

6 MS. STERLING: Claimed it was never sent.

7 CHAIRPERSON ANDERSON: Well, I think everyone
8 agrees that there was no zip code and the post
9 office probably doesn't deliver notices if it
10 doesn't have a zip code and that's a disagreement
11 on both sides that if the letter was sent there's
12 not a zip code so the letter was not properly
13 addressed, and I think there's agreement on both
14 sides that the letter wasn't properly addressed
15 because it wasn't, it doesn't have a zip code and
16 secondly the letter was mailed eight days prior
17 to and the statute also states that they were
18 supposed to get notice seven days so even if the
19 letter was properly addressed it would appear
20 that maybe it would have arrived the second, on
21 the next day, I don't know, but I'm just saying -
22 -

1 MR. MCKAY: But isn't it true that the law
2 usually states that it needs to be postmarked if
3 a notice is postmarked by the date, isn't that
4 usually? I mean otherwise there's no way to know
5 when it was -- you know, you could say it takes
6 20 days to arrive, I mean that's -- even -- but
7 if that's a new requirement for registered mail
8 then we will probably need a very clear person to
9 send it to because I don't think they allow
10 registered mail to just an address.

11 CHAIRPERSON ANDERSON: Well, section 17 -- I
12 pay attention to what you give me. Pursuant to
13 section 1702 when it talks about computation of
14 time, it says 'whenever a party to the proceeding
15 under the chapter has a right or is required to
16 perform some act within a specified time period,
17 after the service of notice upon the party and
18 the notice is served upon the party by mail,
19 three days shall be added to the prescribed
20 period. So, the statute says that if you're
21 going to mail it then it should be at a minimum
22 10 days.

1 [Off record conversation]

2 CHAIRPERSON ANDERSON: I stand corrected.

3 25-601, a resolution concerning license
4 application has been fully approved in accordance
5 with the association's article with notice of the
6 meeting given to the voting body and the
7 applicant at least seven days before the date of
8 the meeting. That's 25-601. That's what it
9 refers to.

10 MR. SILVERSTEIN: Mr. Chairman?

11 CHAIRPERSON ANDERSON: Yes.

12 MR. SILVERSTEIN: To underscore the verbiage,
13 "carry to the party or given to the applicant,"
14 that doesn't mean mail, that means given to,
15 correct?

16 CHAIRPERSON ANDERSON: Given to. All right.

17 CHAIRPERSON ANDERSON: Any other
18 representation that needs to be made?

19 MS. STERLING: So are you saying that
20 protestants have to physically deliver notice?

21 MR. ALBERTI: No. In my opinion, and this is
22 only my opinion, if that letter had been sent 20

1 days prior to the meeting, I would probably be
2 deferential to your plea, all right? But I'm
3 having trouble with the fact that it was sent
4 only eight days. It's a seven-day notice and you
5 sent it on the eighth day, I'm having trouble
6 being sympathetic. Let's put it that way. So,
7 again, you know if you had done this 20 days
8 ahead of time, 18 days ahead of time I'd go "oh
9 well, they didn't get it on time, I'll blame it
10 on the post office. I can't really blame it on
11 the post office when it was sent eight days ahead
12 of time.

13 MS. STERLING: I mean, they're alleging they
14 never received it.

15 MR. ALBERTI: That's not the issue for me.
16 The issue is the timing.

17 MS. STERLING: So, to clarify what Mr.
18 Silverstein just said are we now required to
19 physically also deliver it in person?

20 MR. ALBERTI: No. If you send this -- again,
21 I don't know Mr. Silverstein's opinion, if you
22 had sent this timely. You know, if you had made

1 a real effort to get this to them in time, all
2 right? I would accept that there's some doubt
3 that it -- you know -- could have gotten there on
4 time, I mean, you know, or the post office messed
5 up in the face of -- you know -- I wouldn't be
6 strictly looking at the seven days, but the fact
7 is it was sent eight days ahead of time and
8 that's not enough for the post office to deliver
9 it under normal circumstances unless you get
10 really lucky.

11 CHAIRPERSON ANDERSON: And you can also --
12 hold on one minute, just one minute. You can also
13 do certified mail so if it's sent certified mail
14 so if you have a receipt you can say it was
15 mailed timely and wouldn't have this argument,
16 but go ahead Mr. Silverstein. Go ahead.

17 MR. SILVERSTEIN: Yeah, I would clarify
18 "given" as I understand it would be they have
19 actually received it, not that it was sent seven`
20 days, seven and a half days, eight days, and that
21 a reasonable person using the reasonable standard
22 I would ask -- I would ask my Board members are

1 we talking e-mail as well? Seven days?

2 MR. ALBERTI: Yeah, I mean e-mail. An e-mail
3 launched seven days ahead of time, that's proper
4 notice.

5 MR. SILVERSTEIN: And that would count as
6 given.

7 MR. ALBERTI: But that's not an issue here,
8 e-mail is not an issue. We're not adding you
9 must physically go and deliver but that there
10 must be some expectation, reasonable expectation,
11 that they would receive it within that seven
12 days. If you sent it two weeks, ten days, or two
13 weeks ahead or 20 days, or you know, it's
14 reasonable.

15 MS. STERLING: As anybody in this day and age
16 knows we'd all prefer to work by e-mail and then
17 we're sure that it gets delivered to the
18 interested parties in a --

19 MR. SILVERSTEIN: I'm having trouble hearing
20 you, Ms. Sterling.

21 MS. STERLING: As we all know in this day and
22 age we're all happy to work by e-mail so

1 everything gets delivered in a timely manner.
2 That would put the onus on ABRA to actually have
3 that information for the protestants to be able
4 to access the owners of not only this license,
5 but all licenses. So, I would request from ABRA
6 staff that full information is now attached to
7 all these notices for renewal so that -- so that
8 the residents can follow the rules and make
9 timely protests in a reasonable manner.

10 CHAIRPERSON ANDERSON: Well, one thing I'll
11 say, I'll say to you ma'am. I've been on this
12 Board since November and this is the renewal
13 season in the sense that we have probably close
14 to 1000 establishments that are being renewed
15 this period and this is the first case that I've
16 had where a neighborhood association for the ANC
17 are complaining that they weren't aware of the
18 specific deadline.

19 Most other agencies and organizations have --
20 they have -- they are aware of the timeline, so
21 ABRA, I'm not going to say ABRA is at fault by
22 not providing this information because based on

1 the amount of renewals that when I walk down the
2 street I see almost every establishment has a
3 placard in the window and most of the
4 organizations are aware of the timeline, but if
5 ABRA needs to do that I will talk to the director
6 to see what instruction is given to the community
7 in the sense of what their rights are, whether or
8 not they need to protest this establishment, but
9 if we're not doing what we would do, I will talk
10 to the director to see what it is that we can do
11 to further streamline the process, okay?

12 MS. STERLING: It would be great and we are
13 in the epicenter of that renewal. I mean, our
14 organization is right here and we've never been
15 at a motions hearing for missing a timely
16 delivery, so we thought we were very clear about
17 delivery and have always followed the rules and
18 have never been here and have -- make 20
19 settlement agreements as a civic association, so
20 we have a long history of complying with the
21 regulations and have never had any problem and as
22 you can see, you're right, walking around this

1 neighborhood you see a placard in almost every
2 open space.

3 CHAIRPERSON ANDERSON: Any other
4 representation by either side?

5 MR. ROBINSON: No, thank you.

6 CHAIRPERSON ANDERSON: Any other questions by
7 any other Board member? With that said I then
8 make a motion that the request be denied. Is
9 there a second?

10 MR. SHORT: Second.

11 CHAIRPERSON ANDERSON: Mr. Short has seconded
12 the motion. All those in favor say aye. [Chorus
13 of ayes] Those opposed? [No audible response.]
14 The matter passed 4-zero-zero. I'm sorry ma'am
15 but the law is the law and we have to follow the
16 process and we cannot grant your motion. Okay?

17 MS. STERLING: Thank you.

18 MR. CURTZ: Thank you very much for your
19 time.

20 (Whereupon, the above-entitled matter was
21 concluded.)

22